UNITED STATES COURT OF APPEALS,
SEVENTH CIRCUIT

IN THE MATTER OF FRANCISCO LOPEZ,
Debtor-Appellant.

No. 97-1089

June 27, 1997

Before POSNER, Chief Judge, and MANION and ROVNER, Circuit Judges.

POSNER, Chief Judge.

Before us is a motion to dismiss for lack of jurisdiction an appeal from a judgment by the district court remanding a case to the bankruptcy court for further findings. We asked the parties to brief the issue of our appellate jurisdiction. The appellant's brief cites cases from other circuits that might be thought to support appellate jurisdiction in a case such as this, but neglects to cite any case from this circuit — though our cases, as the cases the appellant does cite make clear, rule out such jurisdiction.

We write to reiterate this circuit's position but also to invite the Supreme Court's attention to a persistent circuit split that only the Supreme Court can heal. In a series of cases beginning with *In re Riggsby*, 745 F.2d 1153 (7th Cir. 1984), this court has held that even if the decision of the bankruptcy court is final, a decision by the district court on appeal remanding the bankruptcy court's decision for further proceedings in the bankruptcy court is not final, and so is not appealable to this court, unless the further proceedings contemplated are of a purely ministerial character, such as calculating prejudgment interest when the amount of the judgment, the interest rate, and the period over which the interest is to be calculated are all uncontested. *In re Stoecker*, 5 F.3d 1022, 1026 (7th Cir. 1993); *In re Jartran, Inc.*, 886 F.2d 859, 862 (7th Cir. 1989); *In re Fox,* 762 F.2d 54, 55 (7th Cir. 1985); *In re Goldblatt Bros., Inc.*, 758 F.2d 1248,

1250-51 (7th Cir. 1985). In such a case, the proceedings on remand are highly unlikely to generate a further appeal, so deciding the issue appealed from immediately will save time without raising the spectre of piecemeal appeals. This is not such a case. The issue is whether the debtor fraudulently undervalued his assets and so should be denied a discharge of his debts. The purpose of the remand ordered by the district court is to determine the value of the debtor's principal asset under principles set forth in a recent decision by this court, *In re Prince*, 85 F.3d (7th Cir. 1996), because whether the debtor did undervalue his assets, and if so by how much, is important to the issue of fraudulent undervaluation, though not necessarily conclusive. It is apparent that such a remand is not ministerial, and therefore we have no appellate jurisdiction if we adhere to *Riggsby* and the cases following it.

Our position is not idiosyncratic. Indeed, it is followed in at least eight of the other circuits. *See In re Gould & Eberhardt Gear Machinery Corp.*, 852 F.2d 26 (1st Cir. 1988); *In re Harrington*, 992 F.2d 3 (1st Cir. 1993); *Bowers v. Connecticut National Bank*, 847 F.2d 1019, 1023-24 (2d Cir. 1988); *In re Prudential Lines, Inc.*, 59 F.3d 327, 331-32 (2d Cir. 1995); *In re Chateaugay Corp.*, 838 F.2d 59 (2d Cir. 1988); *United States v. Carolina Parachute Corp.*, 907 F.2d 1469, 1472 n.3 (4th Cir. 1990); *Capitol Credit Plan of Tennessee, Inc. v. Shaffer*, 912 F.2d 749 (4th Cir. 1990); *In re Bowman*, 821 F.2d 245 (5th Cir. 1987); *In re County Management, Inc.*, 788 F.2d 311 (5th Cir. 1986); *In re Vekco*, 792 F.2d 744 (8th Cir. 1986); *In re Broken Bow Ranch, Inc.*, 33 F.3d 1005, 1008 (8th Cir. 1994); *In re Woods Farmers Cooperative Elevator Co.*, 983 F.2d 125, 127 (8th Cir. 1993); *In re Hansen*, 702 F.2d 728 (8th Cir. 1983) (per curiam); *In re Commercial Contractors, Inc.*, 771 F.2d 1373 (10th Cir. 1985); *In re Rex Montis Silver Co.*, 87 F.3d 435, 438 (10th Cir. 1996); *Temex Energy, Inc. v. Underwood, Wilson, Berry, Stein & Johnson*, 968 F.2d 1003 (10th Cir. 1992); *In re Grey*, 902 F.2d 1479, 1481 (10th Cir. 1990) (per curiam); *In re TCL Investors*, 775 F.2d 1516, 1518-19 (11th Cir. 1985); *In re Dixie Broadcasting, Inc.*, 871 F.2d 1023, 1028-29 (11th Cir.

1989); *In re Miscott Corp.*, 848 F.2d 1190, 1192-93 (11th Cir. 1988); *Jove Engineering, Inc. v. I.R.S.*, 92 F.3d 1539, 1548 (11th Cir. 1996); *In re Regency Woods Apartments, Ltd.*, 686 F.2d 899 (11th Cir. 1982) (per curiam); *In re St. Charles Preservation Investors, Ltd.*, 916 F.2d 727 (D.C.Cir. 1990) (per curiam). One Eighth Circuit case, *In re Bestmann*, 720 F.2d 484, 486 (8th Cir. 1983), is contrary, but in light of the number of other Eighth Circuit cases supporting the majority rule appears to be an accident.

Two circuits clearly (the Third and the Ninth), and one possibly (the Sixth), allow an appeal from an order by the district court remanding the case to the bankruptcy court if on balance the goal of an expeditious winding up of the bankruptcy proceeding will be furthered by allowing an immediate appeal. *See In re Marin Motor Oil, Inc.*, 689 F.2d 445, 448-49 (3d Cir. 1982); *In re Continental Airlines, Inc.*, 932 F.2d 282, 285-86 (3d Cir. 1991); *In re Meyertech Corp.*, 831 F.2d 410, 414 (3d Cir. 1987); *In re Hammond*, 27 F.3d 52, 55 n.5 (3d Cir. 1994); *In re Blue Coal Corp.*, 986 F.2d 687, 689 (3d Cir. 1993); *In re Comer*, 716 F.2d 168, 172 (3d Cir. 1983); *In re Bonner Mall Partnership*, 2 F.3d 899, 904-05 (9th Cir. 1993), *cert. dismissed*, 513 U.S. 18, 115 S. Ct. 386, 130 L.Ed.2d 233 (1994); *In re Stanton*, 766 F.2d 1283, 1285-87 (9th Cir. 1985) (per curiam); *In re Sambo's Restaurants, Inc.*, 754 F.2d 811, 813-15 (9th Cir. 1985); *In re Dominguez*, 51 F.3d 1502, 1506-07 (9th Cir. 1995); *In re United Insurance Management, Inc.*, 14 F.3d 1380 (9th Cir. 1994); *In re Martinez*, 721 F.2d 262, 265 (9th Cir. 1983); *In re Gardner*, 810 F.2d 87, 91-92 (6th Cir. 1987); but *cf. In re Frederick Petroleum Corp.*, 912 F.2d 850 (6th Cir. 1990). These courts do not deny that the majority rule is consistent with (in fact, it is identical to) the rule with regard to the finality of district court decisions in general, but they defend their approach by pointing out that finality has traditionally been conceived more flexibly in the case of bankruptcy appeals. E.g., *In re Marin Motor Oil, Inc., supra*, 689 F.2d at 449; *In re Bonner Mall Partnership, supra*, 2 F.3d at 903. But this is true only in a very special and limited sense, and one that has no bearing on the appealability of a remand. A

bankruptcy case is often a congeries of functionally distinct cases. The clearest example is that of the adversary action. Suppose the debtor has a tort claim against some third party. The trustee in bankruptcy will litigate that claim as an adversary action against the third party, embedded in the bankruptcy proceeding. Once the action is finally decided in the bankruptcy and district courts, the fact that the bankruptcy proceeding may be continuing is no reason to delay the appeal from the decision in the action, so the decision is deemed "final," and appeal allowed. E.g., *In re Devlieg*, 56 F.3d 32, 33 (7th Cir. 1995); *In re Kilgus*, 811 F.2d 1112, 1114-16 (7th Cir. 1987); *In re Morse Electric Co.*, 805 F.2d 262, 265 (7th Cir. 1986).

Slightly more difficult are cases in which the district court, on appeal from the bankruptcy court, resolves the status of a creditor's claim, but no judgment is entered. For example, the trustee may have contested the claim and the court have resolved the contest in the creditor's favor; so his claim has been allowed, but how much of it he will be able to collect will depend on the number and priority of other claims and the value of the debtor's estate. An immediate appeal is allowed nonetheless, e.g., *In re Riggsby, supra*, 745 F.2d at 1155; *In re Jartran, Inc., supra*, 886 F.2d at 862, because in normal cases collection proceedings are post-judgement and because all issues bearing on the claim involved in the appeal have been resolved. As is not the case when the bankruptcy court's decision with regard to the creditor's claim (or, as in this case, the debtor's claim for a discharge) is remanded for further proceedings concerning that very claim.

None of *those* cases, in which an appeal is allowed before the bankruptcy proceeding has ended, is a precedent for allowing an appeal in this case. The minority rule, which allows an immediate appeal nevertheless upon a balancing of the pros and cons of relaxing the requirement of finality — a standard so loose that it might conceivably allow an immediate appeal in the present case — amounts to the assumption by a court of appeals of a discretionary authority to allow an interlocutory appeal in bankruptcy when, all things considered, such an appeal would be consistent with sound administration of the bankruptcy laws. This

is plain from the formulation in *In re Bonner Mall Partnership, supra*, 2 F.3d at 904: ("we balance two important policies: avoiding piecemeal appeals and enhancing judicial efficiency. We also consider the systemic interest in preserving the bankruptcy court's role as the finder of fact" (footnote omitted). The provision of the Judicial Code governing appeals to the courts of appeals in bankruptcy cases does not authorize interlocutory appeals. It confines our jurisdiction to appeals from "final decisions, judgments, orders, and decrees." 28 U.S.C. § 158(d). Nor can the word "final" be thought, in light of tradition in bankruptcy cases, a term of art meaning "final or nonfinal," for we have seen that the tradition is narrower; it requires meaningful finality, albeit finality of the proceeding embedded in the overall bankruptcy case rather than of the bankruptcy case itself. The Supreme Court has been notably literal-minded of late in interpreting the provisions of the Judicial Code dealing with bankruptcy jurisdiction, see *Connecticut National Bank v. Germain*, 503 U.S. 249, 253-54, 112 S. Ct. 1146, 1149-50, 112 S. Ct. 1146, 1149-50, 117 L.Ed.2d 391 (1992), and we think it unlikely to adopt the minority rule.

There are also compelling practical objections to the rule. It is terribly woolly, as the quotation from the *Bonner Mall* opinion will have illustrated. The Third Circuit's formulation is no more precise: it involves "balancing a general reluctance to expand traditional interpretations regarding finality and a desire to effectuate a practical termination of the matter before us. Factors to evaluate in this weighing process are the impact upon the assets of the bankrupt estate, the necessity for further fact finding on remand, the preclusive effect of our decision on the merits on further litigation, and whether the interest of judicial economy would be furthered." *In re Meyertech Corp., supra*, 831 F.2d at 414. (It is telling that no single formulation has emerged as canonical.) Jurisdictional rules ought to be simple and precise so that judges and lawyers are spared having to litigate over not the merits of a legal dispute but where and when those merits shall be litigated. *In re Kilgus, supra*, 811 F.2d at 1117. The majority rule requires distinguishing ministerial from nonministerial

remands, ordinarily a simple task; just compare the lengths of the opinions applying that rule with the lengths of the opinions applying the minority rule. And we have not been made aware of any injustices that have resulted from the application of the majority rule. It is the sounder rule, and we therefore adhere to it and dismiss this appeal.

DISMISSED.

UNITED STATES DISTRICT COURT,
N.D. ILLINOIS, EASTERN DIVISION

GAY C. RICCA-STROUD,
Plaintiff-Appellant,

v.

FRANCISCO LOPEZ,
Defendant-Appellee.

No. 95 C 7189

Oct. 21, 1996

MEMORANDUM OPINION AND ORDER

BUCKLO, District Judge

In November, 1993 the defendant, Dr. Francisco Lopez, filed for bankruptcy under Chapter 7 of the bankruptcy code. The plaintiff, Gay C. Ricca-Stroud, opposed Dr. Lopez' bankruptcy discharge arguing that Dr. Lopez failed to disclose or significantly undervalued several assets on his bankruptcy schedules. On October 18, 1995 the bankruptcy court, Judge Thomas James presiding, granted Dr. Lopez his discharge and entered judgment in his favor. Ms. Ricca-Stroud filed a timely appeal and raises six errors allegedly committed by the bankruptcy court which would justify reversing the decision: (1) denial of her motion to amend the complaint; (2) finding that the $500 valuation of the debtor's medical practice corporation was not a false oath; (3) ruling that the debtor was not responsible for the truthfulness of his oath on bankruptcy schedules where he relied on agents to prepare them but did not believe all of the valuations contained therein; (4) ruling that the debtor did not make a false oath where he relied on his agents to value his assets but disclaimed responsibility for those valuations; (5) finding that the debtor did not demonstrate reckless intent rising to the level of a fraud violation under Section 727 of the Bankruptcy Code; and (6)

relying on an outside document which was not in evidence. For the reasons set forth below, the order denying leave to amend is affirmed, but the case is remanded back to the bankruptcy court for further proceedings consistent with this opinion.

Denial of Motion to Amend Complaint

On August 29, 1995 Ms. Ricca-Stroud filed her motion to amend her complaint, and the bankruptcy court heard this motion on September 8th. The court denied her motion finding that it would have been "unfair at this late date" to permit Ms. Ricca-Stroud to amend her complaint when the trial was set to occur in approximately one month. Tr. of 9/8/95, at 25. Ms. Ricca-Stroud argues that she needed to engage in discovery to learn all of the pertinent facts in order to plead the new fraud count with particularity. Moreover, she claims that she could not file her motion any earlier due to the briefing schedule and resolution of a lengthy summary judgment motion. For those reasons she contends that the bankruptcy judge abused his discretion in denying her motion. I cannot agree.

A trial judge has broad discretion when deciding whether to grant leave to amend a complaint. *See J.D. Marshall Int'l v. Redstart, Inc.*, 935 F.2d 815, 819 (7th Cir. 1991). A judge's decision on such a matter may be reversed only for an abuse of discretion because "[a] trial judge is particularly well-situated to judge the worthiness of a plaintiff's motion to amend his complaint, having been involved in the progress of the case throughout its development and having viewed first-hand the party's diligence or lack thereof." *Bohen v. City of East Chicago, Ind.*, 799 F.2d 1180, 1185 (7th Cir. 1986). Although leave to amend is usually given freely, it may be restricted where prejudice to a party or delay by a party are involved. *Id.* at 1184. Even if I might have arrived at a different conclusion than the trial judge, that fact does not mean that the trial judge abused his discretion. *Id.* at 1185.

In the instant case, the bankruptcy court indicated that it had difficulty with the timeliness of Ms. Ricca-Stroud's motion to amend. Tr. of 9/8/95, at 18, 25. Furthermore, the court seemed

to indicate that Dr. Lopez would be prejudiced by the extra time and effort that would be necessary in order to answer the additional claim which Ms. Ricca-Stroud sought to include in her complaint. *Id.* at 13, 18. Though it would have been preferable for the court to articulate its reasoning on this issue with greater clarity, the procedural history of this case does support the court's decision to deny the motion.

Ms. Ricca-Stroud originally filed her complaint on June 9, 1994. On August 15, 1994 the bankruptcy court struck two of the claims for failure to plead them with sufficient particularity. In the ensuing year, the parties briefed and argued Dr. Lopez' motion for summary judgment, which ultimately was denied on June 30, 1995. During this time, the parties also engaged in discovery which permitted Ms. Ricca-Stroud to discover the facts she needed to replead her claims. Tr. of 9/8/95, at 17, 21. Yet during this entire time, Ms. Ricca-Stroud failed to move for leave to file an amended complaint. In fact, Ms. Ricca-Stroud waited for two months after the ruling on the summary judgment motion to file her motion for leave, despite the fact that she knew the facts relating to the issue and briefed them in her summary judgment responses. *Id.* at 21-22. In the hearing on this motion for leave, counsel for Ms. Ricca-Stroud merely stated that "I felt that we couldn't amend a complaint until the summary judgment motion was resolved." *Id.* at 22. Not only did counsel fail to offer an explanation for this statement, but even if I accept his statement, the fact remains that the motion was not filed until *two months* after the resolution of the summary judgment motion. Hence, the bankruptcy court did not abuse its discretion in denying the motion to amend the complaint.

Valuation of the Medical Practice

The parties have spilled much ink on the proper method by which Dr. Lopez' medical practice corporation should have been valued on his bankruptcy schedules. Dr. Lopez argues that the cost approach, which measures the liquidation value of the practice, is most appropriate because the practice would be liquidated and not sold as a going concern. Therefore, he claims

that he did not make a false oath in swearing to that value in his schedules. In contrast, Ms. Ricca-Stroud contends that the practice should be valued as a going concern based on the income streams that had been generated in the past and that could be generated in the future. The bankruptcy court found Dr. Lopez' valuation method to be acceptable; therefore, he had not made a false oath. Without further factual development on this point, however, I cannot decide this issue.

During the pendency of this appeal, the Seventh Circuit decided *In re Prince*, 85 F.3d 314 (7th Cir. 1996). *Prince* involved a physician and his wife who had filed for bankruptcy under Chapter 11 and had proposed that their estate be liquidated as part of the plan of reorganization.[1] As part of this plan, Dr. Prince was to retain his medical practice corporation, and he agreed to pay the equity value of it into a fund for the creditors of the estate. *Id.* at 316. Dr. Prince claimed that the equity value of the corporation was $7,500 based on the value of the physical assets. *Id.* The creditors committee's expert, however, placed the value of the corporation at $650,000 based on the value of Dr. Prince's goodwill and the capitalization of the cash flow likely to be generated from the corporation in the future. *Id.* at 317. The bankruptcy court accepted Dr. Prince's valuation, but the district court reversed, holding that the value of goodwill must be included in the calculation. The Seventh Circuit affirmed the district court. *Id.* at 325.

In reaching its conclusion, the Seventh Circuit explained that liquidation value is appropriate only in those cases where a business is dissolving and it would not be appropriate where a business was expected to continue as a going concern. *Id.* at 320. The court further found that despite the lack of a non-compete

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[1] Although *Prince* involved a Chapter 11 bankruptcy, and the case at bar is a Chapter 7 bankruptcy, that fact does not make *Prince* inapplicable. Both cases involve a plan of liquidation, and the analysis used by the Seventh Circuit concerning valuation is applicable regardless of the type of bankruptcy.

agreement between Dr. Prince and his medical corporation, the $7,500 liquidation value could not be used. On this point, the court stated:

> The bankruptcy court's task was not to determine the present value of the stock as of some hypothetical future day when Dr. Prince left to compete with his own corporation, but to determine the value of the stock on the day the bankruptcy reorganization plan was confirmed. Present value is derived by discounting back a projected stream of future cash flows, and this stream of cash flow projections is based on the probability of possible future events. . . . [Dr. Prince's leaving] was a possible event that affected the value of the stock: the higher the probability of him competing, the lower the expected future cash flows to the stock. . . . [T]he mere possibility that he might leave to compete with the corporation does not render the stock worthless any more than the possibility of fire destroying an uninsured house strips that house of every cent of its present value. What is important. . . is the probability of a particular future event occurring. *Id.* at 321. In the instant case, the status of Dr. Lopez' medical corporation as a going concern and the probability of Dr. Lopez leaving to compete with his own practice remain issues which need further development and clarification.

The bankruptcy court's decision to accept liquidation value as an adequate calculation of Dr. Lopez' medical corporation was based largely on the court's conclusion that the corporation could not be a going concern if Dr. Lopez left to compete. Tr. of 10/18/95, at 547-48, 550. Yet as *Prince* makes clear, the possibility of Dr. Lopez leaving was just a factor to consider when calculating the future cash flows of the corporation. Whether or not he could or, in fact, would leave cannot be conclusive on the status of the corporation as a going concern. Hence, the bankruptcy court's task upon remand is twofold. First, it must decide whether Dr. Lopez' medical corporation could continue as a going concern. Second, if the corporation could continue as a going concern, it must determine what the present value of the stock would be given the probability of any

future events and their impact on the value of the stock. If the second inquiry is necessary, I would commend to the bankruptcy court, in addition to any testimonial evidence or expert reports, the valuation method that was outlined in *Prince*. 85 F.3d at 319-324.[2]

Reliance on Agents in Preparing Schedules

Ms. Ricca-Stroud's third, fourth, and fifth grounds for reversal all may be addressed as a group. Each of the claims essentially relates to the question of whether or not Dr. Lopez made a false oath on his bankruptcy schedules by virtue of the fact that he relied on an agent to prepare them. The bankruptcy court found Dr. Lopez to be a credible witness concerning this matter, and the court did not find him to be reckless by accepting and signing for the valuations made by his agents. Tr. of 10/18/95, at 549. Ms. Ricca-Stroud argues, however, that these findings were in error because Dr. Lopez stated that he did not agree with the valuations, and a debtor simply cannot rely on the representations made by his agents when signing bankruptcy schedules.

This Court reviews factual findings of the bankruptcy court for clear error, and deference will be given to findings relating to credibility. *In re Lifschultz Fast Freight*, 191 B.R. 712, 715 (N.D. Ill. 1996). I find no clear error in the bankruptcy court's factual findings on these issues. Contrary to Ms. Ricca-Stroud's contentions, Dr. Lopez may not have known whether any of his

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[2] Even if the bankruptcy court subsequently determines that Dr. Lopez' valuation method was incorrect, that finding does not necessitate a finding that Dr. Lopez also made a false oath on his bankruptcy schedules. Much like Dr. Prince, Dr. Lopez genuinely may have believed that his liquidation valuation was appropriate considering that fact that he did not intend to remain in the employ of his corporation after it was sold. However, if the facts demonstrate that Dr. Lopez intended to continue to work for or operate the corporation as a going concern, then the veracity of his oath may be in doubt. In any event, the valuation of that corporation is relevant to the amount of assets available to Dr. Lopez' creditors.

assets were undervalued on the schedules. According to his testimony, Dr. Lopez had no experience with appraising or valuing real estate and had no basis upon which to dispute the appraisals that had been done for this case. Tr. of 10/18/95, at 394-95, 397. Although Dr. Lopez may have stated that he did not agree with all of the amounts listed by his agent, Mr. Schindler, in the schedules, *Id.* at 319, 322, Dr. Lopez is not an accountant, real-estate appraiser or financial analyst. Dr. Lopez is a physician. He lacks the basic knowledge, let alone expertise, necessary to dispute the calculations. Hence, the record supports the bankruptcy court's factual findings and credibility determination with regard to the truthfulness of Dr. Lopez' oaths and his lack of reckless intent.

Furthermore, case law supports this conclusion. If a false statement is made on a bankruptcy schedule, a discharge will not be denied where that false statement is the result of mistake or inadvertence. *See North Community Bank v. Boumenot*, 106 B.R. 149, 152 (N.D.Ill.1989). Rather, a discharge will be denied on this basis only "when the cumulative effect of all falsehoods together evince a pattern of reckless and cavalier disregard for the truth." *In re Montgomery*, 86 B.R. 948, 957 (Bankr. N.D. Ind. 1988), *rev'd on other grounds*, *In re Walters*, 176 B.R. 835, 875 (Bankr. N.D. Ind. 1994); *see also In re Bobroff*, 58 B.R. 950, 953 (Bankr. E.D. Pa. 1986). In this case, no such pattern is apparent on the basis of the record. Dr. Lopez did leave one of his assets, a real estate investment trust worth approximately $2,000, off of his schedule. He claimed that he had forgotten about this asset and that as soon as his office manager reminded him, he directed her to tell Mr. Schindler who reported the asset to the bankruptcy trustee. On this basis, and I hardly find any room for disagreement, the bankruptcy court, by granting the discharge, concluded that this omission was not made knowingly or fraudulently.

With respect to the valuation of Dr. Lopez' property located in Chicago Ridge, Illinois, I also find no basis on which to disturb the bankruptcy court's determination of no reckless intent. Ms. Ricca-Stroud merely claims that because Dr. Lopez' believed

this property to be worth more than the amount for which it was scheduled, his belief establishes that the property was in fact worth that amount. Yet she fails to note that Dr. Lopez also testified that independent appraisals of the property had revealed to him that the property was worth significantly less than what he believed it to be worth. Tr. of 10/18/95, at 395. Even if she had presented some other evidence tending to show that Dr. Lopez knew that the property was worth more than the scheduled amount, the Court is not clear that such evidence would rise to the level of a pattern of "reckless and cavalier disregard for the truth" that would require reversal.[3] Therefore, based on the evidence that actually was presented to the bankruptcy court, I find no clear error in the factual findings.

Use of Document Not in Evidence

In questioning a witness and in issuing his decision, the bankruptcy judge referred to a consulting services practice aid from the American Institute of Certified Public Accountants. Tr. of 10/18/95, at 78-82, 546-48. It is not clear to this Court exactly what purpose the document served. The bankruptcy judge appears to have used the document only for reference and to make some general comments on the methodology of valuing Dr. Lopez' medical corporation. Because I have remanded the case for further factual development on the issue of the valuation of the medical corporation, I need not reach the propriety of the judge's references to this document. Nevertheless, I would caution the bankruptcy judge not to refer to documents that are not in evidence in the case.

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[3] Although Ms. Ricca-Stroud has argued that several other statements made by Dr. Lopez were false and thereby establish this pattern of recklessness, those statements all have to do with the valuation of the medical corporation. That issue has been addressed earlier in this opinion. Whether any of those statements were false and were made knowingly will have to be determined based upon the additional facts to be developed by the bankruptcy court upon remand.

Conclusion

For the foregoing reasons, the bankruptcy court's order denying the plaintiff's motion to amend her complaint is affirmed. As to her remaining five bases for error, all of them are without merit except for the issue relating to valuation of the medical corporation. On that issue, I find that further development of the factual record is necessary. Therefore, this case is remanded to the bankruptcy court for further proceedings consistent with this opinion.

UNITED STATES DISTRICT COURT,
NORTHERN DISTRICT OF ILLINOIS

Name of Assigned Judge or Magistrate Judge	Elaine E. Bucklo	Sitting Judge if Other Than Assigned Judge	
Case Number	95 C 7189	Date	December 9, 1996
Case Title	Ricca-Stroud Vs. Lopez		

* * * *

ORDER

The defendant, Dr. Francisco Lopez, has moved this Court for rehearing of its October 18, 1996 memorandum opinion and order in which the Court, *inter alia*, remanded this case back to the bankruptcy court for additional factual developments on the status of Dr. Lopez' medical practice as a going concern and the valuation of that practice. The Court's holding on this point was influenced largely by the decision in *In Re Prince*, 85 F.3d 314 (7th Cir. 1996). Dr. Lopez has argued that *Prince* is factually and legally distinguishable from this case and that a remand would adduce no relevant new evidence. I disagree.

Although *Prince* involved a Chapter 11 bankruptcy, and the instant case involves a Chapter 7 bankruptcy, that fact alone does not distinguish the two cases. Dr. Lopez' argument confuses the difference between method and application. *Prince* offers the proper method to use to valuate a medical practice, and that method can be employed in different types of bankruptcy cases. The application of that method, however, can be limited to the specific factual setting of *Prince*, a Chapter 11 bankruptcy. The Court's order of remand instructed the bankruptcy court to consider the method of valuation outlined in *Prince*; it did not

instruct the bankruptcy court to apply that valuation in the same manner.

Instead, the Court would like to see further factual development of the record on several points. First, the bankruptcy court should determine if Dr. Lopez could continue as a going concern, regardless of whether or not Dr. Lopez would leave his medical practice and compete with it. If the court answers that question in the affirmative, it should proceed to value Dr. Lopez' stock in medical corporation according to the method outlined in *Prince*. *See* 85 F.3d at 319-24.

Furthermore, the additional evidence and new valuation *could* be relevant to the issue of Dr. Lopez' intent. As the Court states in its earlier order, a finding by the bankruptcy court upon remand that Dr. Lopez' valuation was incorrect would not necessarily mean that Dr. Lopez made a false oath on his schedules. *See* Memo. Op. and Order at 7 n.2. Additional evidence concerning Dr. Lopez' future employment status with his medical corporation might reveal his intent more clearly with respect to his oath and valuations. The current factual record lacks any detailed ex-planation from Dr. Lopez concerning this issue. That record only contains his assertion that he would not continue to work for his medical corporation if it were sold. No examination was conducted regarding Dr. Lopez' reasons for this statement, unlike his statements concerning the value of property in Chicago Ridge or the omission of his real estate investment trust from his schedules. *See* Tr. of 10/18/95 at 395, 402, 502.

On the basis of the current factual record, the Court was not and still is not able to determine whether or not Dr. Lopez acted with fraudulent intent when he signed his bankruptcy schedules with respect to the valuation of his medical practice. For this Court, the *Prince* case highlighted the area of the record where deficiencies exist. The purpose of the remand is to cure those

deficiencies through the development of additional facts which will enable the Court to review this issue appropriately.

ENTER ORDER:

/s/ Elaine E. Bucklo
Elaine E. Bucklo
United States District Judge

Dated: December 9, 1996

[filed Oct. 19, 1995]

UNITED STATES BANKRUPTCY COURT,
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Name of Presiding Judge, Honorable Thomas James

Cause No. 94 A 1056 Date October 18, 1995

Title of Cause	Gay C. Ricca-Stroud v. Francisco Lopez
Brief Statement of Motion	The rules of this court require counsel to furnish the names of all parties entitled to notice of the entry of an order and the names and addresses of their attorneys. Please do this immediately below (separate lists may be appended).
Names and Addresses of moving counsel Representing Names and Addresses of other counsel entitled to notice and names of parties they represent.	The court has held a trial on the complaint of Gay C. Ricca-Stroud, plaintiff, against Francisco Lopez, defendant, objecting to the debtor's discharge. For the reasons stated in open court on October 18, 1995, the court finds and concludes that judgment is to be entered in favor of Francisco Lopez, defendant, against Gay C. Ricca-Stroud, plaintiff, the discharge of Francisco Lopez, debtor, issued and the complaint dismissed. Judgment entered in favor of Francisco Lopez, defendant, against Gay C. Ricca-Stroud, plaintiff. Case dismissed with costs. Discharge of Francisco Lopez, debtor, shall issue.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FRANCISCO LOPEZ,	)	
	)	No. 93 B 23445
	)	
Debtor.	)	
	)	
GAY C. RICCA-STROUD,	)	
	)	No. 94 A 1056
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
FRANCISCO LOPEZ,	)	
	)	
Defendant.	)	

October 18, 1995
2:00 o'clock pm.

TRANSCRIPT OF PROCEEDINGS

BEFORE: THE HONORABLE THOMAS JAMES
APPEARANCES:

MR. RICHARD C. LENG
MR. RALPH J. SCHINDLER
on behalf of Francisco Lopez;

MR. JAMES K. KENNY
MR. ROBERT E. KENNY, JR.
on behalf of Gay C. Ricca-Stroud.

[544] * * * *

THE COURT . . . . Ms. Gay C. Ricca-Stroud has objected to the [545] discharge of Francis Lopez, Dr. Francis Lopez I should say, the defendant in two respects.

In 727 of the Bankruptcy Code, it is stated that "The court shall grant the debtor," Dr. Lopez, "a discharge, unless the debtor," Dr. Lopez, "with intent to hinder, delay, or defraud a creditor or an officer of the estate charged with custody of property under this title, has transferred, removed, destroyed, or mutilated, or concealed or has permitted to be transferred, removed, destroyed, mutilated, or concealed property of the debtor within one year before the date of the filing of the petition."

This section goes on to state that "The court shall grant the debtor a discharge unless the debtor," Dr. Lopez, "knowingly and fraudulently in or in connection with the case made a false oath or account."

The Court is satisfied from its review of the evidence and the cases that have been cited that the objections will be overruled and Dr. Lopez granted a discharge.

The more difficult problem faces the Court in determining whether Dr. Lopez knowingly and fraudulently in or in connection with the case made a false oath or account. As to that provision and the interest in MLH Realty, the Court notes that Dr. Lopez and [546] his lawyer, at the place of the First Meeting Of Creditors, prior to the First Meeting Of Creditors, informed the trustee that there was, indeed, these interests of Dr. Lopez in MLH Realty. The trustee and any creditor present at the meeting were then made aware officially in the proceedings that there were these interests. Indeed, the trustee sold these interests.

Even though I cannot find or the Court cannot find from this that Dr. Lopez knowingly and fraudulently made a false oath as to these interests in MLH Realty, the Court cannot find that Dr. Lopez with intent to hinder, delay, or defraud a creditor concealed these items from creditors so that they would not be

able to take advantage of those assets in the administration of the case so that the asset could be sold and applied, after I suppose all the reasonable expenses, to the payment of creditors. Therefore, the Court concludes that the objection to the nonlisting or the alleged concealment of MLH Realty must fail. As I have stated, the charges as to Dr. Lopez knowingly and fraudulently making other false oaths must also fail.

As has been stated in the American Institute of Certified Public Accountants Consulting Services practice Aid 93-3 involving small business consulting conducting a valuation of a closely held [547] business at page — I gather it's Section 13-100-2, maybe it's Page 13, 105.06: "The practitioner," meaning the CPA, "should be aware that valuation is both an art and a science and, therefore, absolute precision will never be achieved. During the valuation process, certain information will be readily available and unquestionable. Other information will require the valuer to use informed judgment and common sense."

At this juncture, it is not necessary for the Court to determine what is the value of the shares of the stock in Cardiology Internal Medical Associates, S.C. Cardiology Internal is an Illinois Medical Corporation; it is licensed to practice medicine.

It is apparent to the Court that a willing buyer of Cardiology Internal would have to be physician who had a subspeciality in cardiology. It is also apparent to the Court that this willing buyer, the physician with a subspeciality in cardiology, would also want Dr. Lopez to agree to employment for a period of time, a transitional period, so that this willing buyer could work into the practice and accept or take over the patients of Dr. Lopez.

It is unrealistic in the Court's mind to call this Cardiology Internal a going concern where the operations of the company depend on the one physician who [548] does have the affiliations and the contacts to get the patients to bring in the income that is there.

It has not been established to the Court's satisfaction that the lab work was really a source of income independent of the

workings of Dr. Lopez as a physician. Without him, there would be no lab work. The Court is most impressed by the fact that this is a professional corporation from which Dr. Lopez could walk away.

The Court notes in this Consulting Services Practice Aid that many of these instances — many of the examples or the features is to discuss what is a taxable basis. And as Ms. Zimmerman stated, that going concern — in her analysis of going concern, it seemed apparent to the Court that it would be a going concern if, in some way, Dr. Lopez were to be a part of the continuing operation so that, as I said, this physician who had a subspeciality in cardiology could work into the patient list that Dr. Lopez has.

It is impossible for this Court to say that any such valuation is such that there was a false valuation, and it had to be shown by a preponderance of the evidence that there was, indeed, a false valuation or a false oath made. The Court finds that there was no false oath made as to the value of these shares of stock.

[549] It is reasonable for the Court to accept Ms. Zimmerman's valuation. If the debtor had chosen that, maybe the trustee would have gotten a million dollars for these shares of stock. Maybe the trustee would not. It's as easy for the Court to accept the valuation of $2,000 for these shares of stock; therefore, the Court cannot say definitively that the value is such and that the value used was a false claim or a false oath in the schedules.

The Court also feels that it has not been established that Dr. Lopez knowingly and fraudulently made any false oath or account. The Court is satisfied that Dr. Lopez is a credible witness who left the details of his business, and I don't find that this was reckless conduct on behalf of Dr. Lopez to his staff and to his lawyers to make these valuations that he accepted and signed for.

The issues as to Household Furnishings do not rise to a false oath or account. And these were disclosed, as I think the Latorre case has been cited before, 164 Bankruptcy Reports 692, a case

decided in 1994 in the Bankruptcy Court of the Middle District of Florida, fully supports the analysis that the Court has made. Here in this case, a chiropractic practice, the judge, Judge Paskay said that, "The value of the stock depends in large measure on the individual who is rendering the services [550] and the loyalty of the patients to the individual."

The Court has suggested that the value of Cardiology Internal depends on Dr. Lopez who is rendering the services. It has been established to the Court that his patients are loyal to Dr. Lopez. This is a factor of importance on the value of accounts receivable and on the other business of Cardiology Internal.

The Court agrees with Judge Paskay that a debtor's assessment of value is no more than an educated guess on the information available to the debtor at the time, and is merely an expression of the debtor's belief concerning a matter not susceptible of exact knowledge.

The Court notes that the trustee, in seeing and looking over this asset, may, in order to test the value, can, and perhaps should, and I gather may be doing so, attempt to sell the stock in this corporation, Cardiology Internal, to obtain the value of the Cardiology Internal stock.

For these reasons, the Court will enter a judgment in favor of the defendant and against the plaintiffs with costs and dismiss the complaint.

* * * *

RELEVANT STATUTORY PROVISION

28 U.S.C. § 158. Appeals (1990)

(a) The district courts of the United States shall have jurisdiction to hear appeals from final judgements, orders, and decrees, and, with leave of the court, from interlocutory orders and decrees, of bankruptcy judges entered in cases and proceedings referred to the bankruptcy judges under section 157 of this title. An appeal under this subsection shall be taken only to the district court for the judicial district in which the bankruptcy judge is serving.

(b)(1) The judicial council of a circuit may establish a bankruptcy appellate panel, comprised of bankruptcy judges from districts within the circuit to hear and determine, upon the consent of all the parties, appeals under subsection (a) of this section.

(2) If authorized by the Judicial Conference of the United States, the judicial councils of 2 or more circuits may establish a joint bankruptcy appellate panel comprised of bankruptcy judges from the districts within the circuits for which such panel is established, to hear and determine, upon consent of all the parties, appeals under subsection (a) of this section.

(3) No appeal may be referred to a panel under this subsection unless the district judges for the district, by majority vote, authorize such referral of appeals originating within the district.

(4) A panel established under this section shall consist of three bankruptcy judges, provided a bankruptcy judge may not hear an appeal originating within a district for which the judge is appointed or designated under section 152 of this title.

(c) An appeal under subsections (a) and (b) of this section shall be taken in the same manner as appeals in civil proceedings gener- ally are taken to the courts of appeals from the district courts and in the times provided by Rule 8002 of the Bankruptcy Rules.

(d) The courts of appeals shall have jurisdiction of appeals from all final decisions, judgements, orders and decrees entered under subsections (a) and (b) of this section.

28 U.S.C § 1291. Final decisions of district courts

The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. The jurisdiction of the United States Court of Appeals for the Federal Circuit shall be limited to the jurisdiction described in sections 1292(c) and (d) and 1295 of this title.